



An
Bord
Pleanála

Inspector's Report

ABP-313874-22

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| Development | Retention Permission sought for an existing outbuilding ancillary to a dwelling. |
| Location | Tullydonnell, Dunleer, County Louth, A92 D562 |
| Planning Authority | Louth County Council |
| Planning Authority Reg. Ref. | 22282 |
| Applicant(s) | Patrick McGeeney |
| Type of Application | Permission |
| Planning Authority Decision | Refuse |
| Type of Appeal | First |
| Appellant(s) | Patrick McGeeney |
| Observer(s) | None |
| Date of Site Inspection | 16 th August 2023 |
| Inspector | Ian Boyle |

1.0 Site Location and Description

- 1.1. The appeal site comprises a residential property with an address at Tullydonnell, Dunleer, Co. Louth, A92 D562. It accommodates a single storey detached dwelling and an associated outbuilding.
- 1.2. The dwelling is near the centre of the site and faces towards the south. The outbuilding is in the rear garden of the property close to the eastern boundary of the site. There is a dense row of vegetation along the front of the site which impedes direct views from the roadside into the property.
- 1.3. The site is adjoined to the east and west by other similar size residential plots. Each house has direct access to the public road to the south. There is a small drainage channel running along the south side of the road. The land to the north and south is used for agricultural purposes.
- 1.4. The character of the surrounding area is mainly low density, one-off housing and agriculture. Dunleer Town Centre is approximately 4.2km to southwest.
- 1.5. The stated area of the site is approximately 0.32ha.

2.0 Proposed Development

- 2.1. The proposed development is for retention permission of an outbuilding.
- 2.2. The outbuilding is roughly 114sqm and it is stated within the application documentation that it ancillary to the existing dwelling on the site.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority refused retention permission on 26th May 2022 for 3 no. reasons, which are summarised as follows:

1. The Development Plan requires that garages and outbuildings within the curtilage of residential properties should normally be for storage and needs that are incidental to the dwelling onsite, designed and finished in materials that match the dwelling, and proportionate to the existing development on

the site. The outbuilding, by reason of its design, excessive scale, form, bulk and external finish does not reflect that of a domestic garage ancillary to the dwelling on the site and has a negative and injurious impact on the residential amenities of dwellings in the immediate area.

2. The Applicant has failed to demonstrate that additional surface water arising from the development is being dealt with in accordance with Policy Objective IU 19 of the County Development Plan, which requires SuDS measures to be incorporated in all new development.
3. In the absence of an Appropriate Assessment (AA) Screening Report, or Natura Impact Statement (NIS), the Planning Authority cannot be satisfied that the development individually, or in combination with other plans or projects would not be likely to have a significant effect on a European Site. Policy NGB6 of the County Development Plan requires an AA Screening Report, or NIS, to be undertaken where appropriate.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Policy Section 13.8.37 of the Louth County Development Plan 2021-2027 ('Domestic Garages and Outbuildings') states that the purpose of garages and/or outbuildings within the curtilage of a residential property is normally for storage and needs that are incidental to the dwelling on the site.
- The Planning Authority will not normally grant planning permission for a garage or outbuilding of a design or scale that is not in proportion or in keeping with the existing dwelling.
- The Applicant states that the building is solely for domestic use. However, the development resembles that of commercial/industrial unit unsuitable for childcare, or additional accommodation, and is not considered a domestic outbuilding.
- The development by reason of its design, excessive scale and location has a negative and injurious impact on the residential amenities of dwellings in the immediate area, particularly the dwelling to the east. It was also noted during

the site inspection that a forklift truck and other machinery were at the front of the outbuilding.

- The development is not proportionate to the existing dwelling on site.
- The site is not located within a known flood zone as per the OPW flood info maps.
- No surface water design calculations/designs have been submitted for assessment. This is contrary to Policy Objective IU 19 of the Development Plan, which requires the use of Sustainable Drainage Systems to limit the extent of hard surface and paving and requires SuDS measures to be incorporated into all new development, including extensions to existing developments. All development proposals shall be accompanied by a comprehensive SuDS assessment, including run-off quantity, run-off quality and impacts on habitat and water quality.
- It is recommended that the application be refused.

3.3. Third Party Observations

The Planning Authority received a single third party observation from a resident in the area. The following concerns are mainly:

- The purpose of the outbuilding is to support a commercial enterprise. The delivery of machinery and the use of a forklift has been observed on the site.
- The residential amenity of the adjoining property has been significantly affected by the high volume of noise linked to this commercial activity and there are heavy goods vehicles visiting the site on a regular basis.
- The potential for environmental pollution for this commercial workshop is of concern.

4.0 Planning History

Ref. 20U120: The Planner's Report on file states that the Planning Authority issued an **enforcement notice** in 2021 for an unauthorised portal frame shed within the curtilage of the dwelling and is being used for alleged commercial activity purposes. The Enforcement Notice required the alleged commercial activity to cease within 48 hours, the removal of all fixtures, fittings and plant associated with the commercial activity within 14 days, and the dismantling and removal of the shed within one month.

Reg. Ref. 05957: The Planning Authority **granted retention permission** for alterations and extensions to an existing dwelling incorporating two dormer windows and other modifications in November 2005.

Reg. Ref. 91173: The Planning Authority **granted permission** for a dwelling in March 1991.

Reg. Ref. 8074: The Planning Authority **granted outline permission** for two dwellings in January 1980.

5.0 Policy Context

5.1. Louth County Development Plan 2021-2027

Background

The Louth County Development Plan 2021-2027 came into effect on the 11th November 2021 ('Development Plan').

Infrastructure and Public Utilities (Chapter 10)

Policy Objective IU 19 is to require the use of Sustainable Drainage Systems to minimise and limit the extent of hard surfacing and paving and require the use of SuDS measures be incorporated in all new development (including extensions to existing developments). All development proposals shall be accompanied by a comprehensive SuDS assessment including run-off quantity, run off quality and impacts on habitat and water quality.

Development Management Standards (Chapter 13)

Domestic Garages and Outbuildings, Section 13.8.3, states that:

'The purpose of garages and outbuildings within the curtilage of residential properties is normally for storage and needs that are incidental to the dwelling on site. Whilst there has been an increasing demand for larger garages, it is important that any garage is proportionate to the existing property so that it will integrate into the local environment. Garages will normally be positioned to the side or rear of the dwelling and will be designed and finished in materials that match the dwelling.'

The uses of garages will be strictly controlled to uses incidental to the residential property. The Planning Authority will not normally grant planning permission for a garage or outbuilding of a design or scale that is not in proportion or in keeping with the existing dwelling.'

Any application for such a development would require a clear rationale setting out the reasons for the development, the intended use of the garage/building, and how it would integrate into the local environment. These applications will be assessed on a case-by-case basis.'

Garages and Outbuildings, Section 13.9.10, states that:

'The purpose of garages and outbuildings within the curtilage of residential properties is normally for storage and needs that are incidental to the dwelling on site.'

Garages will normally be positioned to the side or rear of the dwelling and will be designed and finished in materials that match the dwelling. The design and scale of any garage shall be proportionate to the dwelling.'

Outbuildings that will have a use incidental to the dwelling will be considered on a case-by-case basis and will be dependent on the location, the nature of the use and the design and scale of the building.'

5.2. Natural Heritage Designations

The site is not located within a designated Natura 2000 site.

The nearest European Site is Dundalk Bay SAC (Site Code: 000455), which is roughly 3.3km to the north. The site is also an SPA (Site Code: 004026).

Stabannan-Braganstown SPA (Site Code: 004091) is roughly 7.3km to the northwest.

Clogerhead SAC (Site Code: 001459) is roughly 9.3km to the southwest.

6.0 The Appeal

6.1. Grounds of Appeal

A First Party Appeal against Decision to Refuse Retention Permission has been lodged by the Applicant.

The main grounds of appeal are as follows:

- The primary purpose of the outbuilding is to provide a safe and regulatory space for the Applicant's son who has special needs. This is further described by supporting documentation from the HSE and correspondence from a clinical psychologist (see documents appended to the rear of the appeal).
- The decision to construct the outbuilding without permission was taken without fully understanding the planning system and was needed at short notice to assist in the wellbeing of the Applicant's son.
- The metal shed design is commonplace for domestic use and not unusual.
- The outbuilding is out of view from the public road and has no negative visual or injurious impacts on the surrounding area. It is screened from view by hedges and trees and tucked into rear corner of the property.
- The location of the outbuilding is in accordance with the County Development Plan regarding policy for garages and outbuildings (Section 13.9.10).
- Letters of support from neighbours are appended to the appeal which state there are no issues regarding noise, traffic, or pollution and that there is no commercial activity taking place on the property.

- No commercial activity has happened within the building. Only rarely, and during Covid, were some balers delivered to the house as travel and access to the Applicant's baling business in Newry had been restricted during this time.
- No commercial machinery is being used on the site.
- The only heavy traffic to the property in recent years has been generated by home renovations and tradespeople calling to complete work associated with renovating the house.

6.2. Planning Authority Response

- The Planning Authority has no further comment to make.

7.0 Assessment

7.1. The main planning considerations relevant to this appeal are:

- Size, Scale and Design
- Surface Water Disposal
- Appropriate Assessment

7.2. Size, Scale and Design

7.2.1. The Planning Authority's first Reason for Refusal is that garages and outbuildings within the curtilage of a residential property should normally be used for storage and needs that are incidental to the onsite dwelling, and designed and finished in materials that match the dwelling and are proportionate to the existing development on the site.

7.2.2. The Planning Authority considered that the outbuilding, by reason of its design, scale, form, bulk and external finish does not reflect that of a domestic garage ancillary to the dwelling on the site, and that it has a negative and injurious impact on the residential amenities of dwellings in the immediate area.

7.2.3. Section 13.9.10 of the Development Plan is in relation to 'Garages and Outbuildings' and is relevant in the assessment of this appeal case. It states that the purpose of

such structures within the curtilage of residential properties is normally for storage and needs that are incidental to the dwelling onsite. It also states that outbuildings that are incidental to the dwelling will be considered on a case-by-case basis and will be dependent on the location, the nature of the use and the design and scale of the building proposed.

- 7.2.4. The outbuilding has a stated area of roughly 114sqm. It is shown on the Proposed Site Plan as having an approximate length of 20m and width of 6m. The height to top of apex is roughly 3.9m. There is a raised timber decking area at the front of the structure which accommodates a small amount of outdoor furniture, which is evidently for recreational purposes. The building is setback from its shared eastern boundary by roughly 2m, at the nearest point, and 17m from the site's northern (rear) boundary. The materials and finishes are corrugated metal sheeting for the cladding with a translucent roof.
- 7.2.5. The outbuilding is situated to the rear of the property and sits in behind the existing house on the site such that it is not readily visible from the public road. During my site inspection, it was not possible for me to gain direct views of the structure from the roadside, and I observed that the front of the property is heavily vegetated with a dense screen of bushes, trees, and hedges. However, views of the structure from the neighbouring residential property to the east are possible.
- 7.2.6. During my site inspection, I observed that the outbuilding is being used as a domestic garage and is divided into two sections. The shed is effectively split into equal halves with the first section given over to storing household items, such as homeware, shelving units, tins of paint, a car washer, heater, amongst other domestic items. There was also a mobile wood chipper and a small baling machine at the front of the shed. However, there was no evidence that either machine had been in use recently, or required to serve a business-related purpose, such as a workshop, light industrial use, or similar. Further, I note that no associated raw or end-products were on the site including, for example, compressed or compacted bales being readied for transportation, further handling or storage. The second section of the outbuilding, which is to the rear, is used to store play equipment, children's toys, bicycles and garden furniture. The overall appearance and specification of the unit, whilst perhaps larger than average in terms of size and scale, would not be atypical in a rural, countryside setting, in my opinion.

- 7.2.7. Having regard to the above, I am satisfied that the outbuilding is being used purely as a domestic outbuilding, ancillary to the dwelling on the site, and that its function is one of storage and as a play space only. The presence of the aforementioned machinery is not uncommon in such an environment, in my view, and there is nothing to suggest the unit is being used for any form of commercial activity.
- 7.2.8. In summary, I confirm that no commercial or business operation was evidenced onsite during my site inspection, and I was able to gain access to the building as part of my assessment of the case. I further note that application before the Board is for the retention of the garage ancillary to a domestic use and, as such, any other use of the structure would require a further planning application, if the use were to change in the future.
- 7.2.9. In terms of the size, scale and design, the outbuilding is considered as large for a domestic shed at approximately 114sqm. However, it is very much out of view from the public road and well screened behind by several large, mature trees, hedges and plants. It is positioned close to the northeastern corner of the property along the eastern boundary of the site. During my site inspection, I observed a dense strip of vegetation on this boundary, which significantly reduced the potential for direct views of the structure from the neighbouring site and other third party lands, albeit views were still attainable.
- 7.2.10. I have no concerns with the design, scale or height of the structure and consider that it integrates appropriately with the subject site and its surrounding environment. Given the overall height, design, scale and extensive planting on the property, it is my opinion that the proposal does not have any unacceptable or detrimental material impact on adjoining properties in terms of overbearance, overshadowing, bulk, massing, or otherwise, and I do not consider it to be visually incongruous or dominant in this rural context.
- 7.2.11. In summary, I conclude the outbuilding is in accordance with Sections 13.8.3 and 13.9.10 of the Development Plan and that it is in keeping with its surrounding context and remains subservient to the existing dwelling on the site. As noted above, the property is well screened by existing vegetation and would not be out of context in this rural setting.

7.3. Surface Water Disposal

- 7.3.1. The Planning Authority's second Reason for Refusal is that the Applicant has failed to demonstrate that additional surface water arising from the development is being dealt with in accordance with Policy Objective IU 19 of the Development Plan, which requires SuDS measures to be incorporated in all new development.
- 7.3.2. The first party appeal provides limited information as to how this issue could be addressed; other than to suggest it can be dealt with under condition. Objective IU 19 of the Development Plan states that all new development proposals, including extensions to existing developments, shall be accompanied by a comprehensive SuDS assessment including run-off quantity, run-off quality and impacts on habitat and water quality.
- 7.3.3. As noted previously, the shed structure is relatively large for a domestic structure at 114sqm. There is also an area of decking at the front of the unit which adds to the amount of hardstand on the property. Therefore, the amount of impermeable area is not insignificant and there is potential for surface water ponding and runoff due to rainwater collecting on the surface and being prevented from penetrating through to ground. I note also that Section 13.20.4 of the Development Plan states that the approach using Sustainable Drainage Systems (SuDS) is applicable in both urban and rural situations and, therefore, applies to the subject development.
- 7.3.4. Notwithstanding the above, I note that the subject property is served by an existing soakaway as a means of surface water disposal. The remaining site area is made up of expansive permeable areas, including front and rear gardens, planted beds and a semi-wild / unmanaged grassy patch in the northeastern corner of the site. These contribute to the 'greening' of the site. However, no other specific SuDS measures have been explicitly set out as part of the application as is required under the relevant section of the Development Plan. Notwithstanding this, given the open nature and spacious size of the site, I consider that a more integrated approach to rainwater management in the form of dedicated SuDS measures could readily be incorporated as part of the development.
- 7.3.5. Therefore, and in having regard to the above, I consider it reasonable to address this issue via condition. I recommend that the condition should require the Applicant to submit a detailed SuDS strategy to the Planning Authority for their written agreement

within 3 months of the final grant of retention permission being issued. Subject to compliance with the condition, I am satisfied that the development should be granted retention permission.

7.4. Appropriate Assessment

- 7.4.1. The Planning Authority’s third Reason for Refusal is in relation to Appropriate Assessment and that they cannot be satisfied that the development individually, or in combination with other plans or projects would not be likely to have a significant effect on a European Site. Policy NGB 6 of the County Development Plan requires an AA Screening Report, or NIS, to be undertaken where appropriate.
- 7.4.2. I note that neither an Appropriate Assessment Screening Report, or Natura Impact Statement (NIS), was submitted as part of the application or with the appeal.
- 7.4.3. The site is not located within a designated Natura 2000 site. The nearest European Site is Dundalk Bay SAC (Site Code: 000455), which is roughly 3.3km to the north. The site is also an SPA (Site Code: 004026). The qualifying interests and conservation objectives for the Dundalk Bay SAC and Dundalk Bay SPA are set out below in Table 7.1
- 7.4.4. Stabannan-Braganstown SPA (Site Code: 004091) is roughly 7.3km to the northwest and Clogherhead SAC (Site Code: 001459) is roughly 9.3km to the southwest. Based on the Source-Pathway-Receptor model, and the absence of an ecological connection, I do not consider that either of these Natura 2000 sites come within the zone of influence for the purposes of Appropriate Assessment.

Table 7.1: Dundalk Bay SAC and SPA

| European Site and code | Qualifying Interests/ Species | Conservation Objective |
|--------------------------|--|--|
| Dundalk Bay SAC (000455) | Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Perennial vegetation of stony banks [1220] Salicornia and other annuals colonising mud and sand [1310] | To maintain the favourable conservation condition of the wetland habitat and restore the condition of Dundalk Bay SAC. |

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| | <p>Atlantic salt meadows (<i>Glaucopuccinellietalia maritima</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> | |
| Dundalk Bay SPA (004026) | <p>great Crested Grebe (<i>Podiceps cristatus</i>) [A005]</p> <p>Greylag Goose (<i>Anser anser</i>) [A043]</p> <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Shelduck (<i>Tadorna tadorna</i>) [A048]</p> <p>Teal (<i>Anas crecca</i>) [A052]</p> <p>Mallard (<i>Anas platyrhynchos</i>) [A053]</p> <p>Pintail (<i>Anas acuta</i>) [A054]</p> <p>Common Scoter (<i>Melanitta nigra</i>) [A065]</p> <p>Red-breasted Merganser (<i>Mergus serrator</i>) [A069]</p> <p>Oystercatcher (<i>Haematopus ostralegus</i>) [A130]</p> <p>Ringed Plover (<i>Charadrius hiaticula</i>) [A137]</p> <p>Golden Plover (<i>Pluvialis apricaria</i>) [A140]</p> <p>Grey Plover (<i>Pluvialis squatarola</i>) [A141]</p> <p>Lapwing (<i>Vanellus vanellus</i>) [A142]</p> <p>Knot (<i>Calidris canutus</i>) [A143]</p> <p>Dunlin (<i>Calidris alpina</i>) [A149]</p> <p>Black-tailed Godwit (<i>Limosa limosa</i>) [A156]</p> <p>Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</p> <p>Curlew (<i>Numenius arquata</i>) [A160]</p> <p>Redshank (<i>Tringa totanus</i>) [A162]</p> <p>Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</p> <p>Common Gull (<i>Larus canus</i>) [A182]</p> <p>Herring Gull (<i>Larus argentatus</i>) [A184]</p> <p>Wetland and Waterbirds [A999]</p> | To maintain the favourable conservation condition of the wintering species listed. |

- 7.4.5. The subject site comprises a residential property in a rural location. The scale of development for which retention permission is sought is not significant for the purposes of Appropriate Assessment and the site is not located within, or immediately adjacent, any Natura/European site.
- 7.4.6. The proposal is for an existing outbuilding in a rural area, which is not likely to have resulted in any significant level of construction waste or potential contaminants or sediments discharging to a European Site. Similarly, given the nature, scale and characteristics of the development proposed, and its receiving environment, I consider that there is no real likelihood of any significant effects arising during the operational phase.
- 7.4.7. In relation to the Policy NGB 6 of the County Development Plan, I note that an Appropriate Assessment Screening Report, or NIS, is required to be undertaken, where it is deemed *appropriate* only (emphasis added).
- 7.4.8. In summary, and in having regard to the nature and scale of development, it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on Dundalk Bay SPA/SAC or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

I recommend that retention permission be granted for the reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the nature, size and scale of the outbuilding to be retained, its setting within a rural area and to the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the outbuilding would not seriously injure the residential or visual amenities of the area, or of property in the

vicinity, would not be prejudicial to public health, and would therefore be accordance with the proper planning and sustainable development of the area.

10.0 Conditions

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| 1. | <p>The development to be retained shall comply with the plans and particulars lodged with the application submitted, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority and the development shall be completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In the interest of clarity.</p> |
| 2. | <p>The outbuilding to be retained shall be used as a private domestic garage solely for purposes incidental to the enjoyment of the dwelling, and shall not be used for commercial, trade or industrial purposes or for human habitation.</p> <p>Reason: In the interest of residential amenity.</p> |
| 3. | <p>Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Details of SuDS measures shall be submitted to the planning authority for written agreement within 3 months of the final grant of retention permission. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In the interest of public health.</p> |
| 4. | <p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the</p> |

Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

[I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.]

Ian Boyle
Senior Planning Inspector

24th August 2023